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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,581	03/17/2004	Erwin Coenraad Murk	903-101	3875
23869 7590 03/19/2007 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			EXAMINER THOMPSON, CAMIE S	
			ART UNIT	PAPER NUMBER
			1774	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/19/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/802,581

Applicant(s)

MURK, ERWIN COENRAAD

Examiner

Camie S. Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Appeal Brief filed September 14, 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Examiner regrets the untimely reopening of prosecution.
2. The rejection of claims 1-9 under 35 U.S.C. 103(a) as being unpatentable over von Bonin, U.S. Patent Number 4,831,062 in view of EP 1001000 is withdrawn due to applicant's argument.
3. The rejection of claims 10-16 under 35 U.S.C. 103(a) as being unpatentable over EP 1001000 is withdrawn due to applicant's argument.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Bonin, U.S. Patent Number 4,831,061 in view of von Bonin, U.S. Patent Number 4,992,481 and in further view of Waller, U.S. Patent Number 5,214,200.  
  
von Bonin ('061) discloses an intumescent material and building elements that contain cement, fillers, sawdust and plasticizer (see column 3, line 52-column 4, line 7). It is disclosed in reference '061 that glass fibers are incorporated into the matrix comprising cementitious material containing cement, fillers, sawdust and plasticizer (see column 6, lines 44-58). Column 5, lines 50-53 of the '061 reference discloses that the fibers are parallel.

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von Bonin ('061) does not specifically disclose the type of cementitious material. Von Bonin ('481) discloses fire retardant elements used in building panels (see column 10, lines 19-40).

Von Bonin ('481) discloses that the cement can be aluminous cement (see column 7, lines 1-4).

Aluminous cement has fire retarding properties. Therefore, it would have been obvious to one of ordinary skill in the art to use aluminous cement in the von Bonin ('061) reference in order to have improved fire resistant properties.

Neither von Bonin reference discloses the type of plasticizer used. Waller discloses plasticizers that comprise carboxylic ethers (see abstract). The use of a carboxylic acid ether in a plasticizer increases fire resistance properties. Therefore, it would have been obvious to one of ordinary skill in the art to have a carboxylic ether plasticizer in order to enhance the fire retarding properties of the matrix material.

6. Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Bonin, U.S. Patent Number 4,831,061 in view of von Bonin, U.S. Patent Number 4,992,481 and in further view of Waller, U.S. Patent Number 5,214,200 and in further view EP 1001000.

von Bonin ('061) discloses an intumescent material and building elements that contain cement, fillers, sawdust and plasticizer (see column 3, line 52-column 4, line 7). It is disclosed in reference '061 that glass fibers are incorporated into the matrix comprising cementitious material containing cement, fillers, sawdust and plasticizer (see column 6, lines 44-58). Column 5, lines 50-53 of the '061 reference discloses that the fibers are parallel.

von Bonin ('061) does not specifically disclose the type of cementitious material. Von Bonin ('481) discloses fire retardant elements used in building panels (see column 10, lines 19-40).

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Von Bonin ('481) discloses that the cement can be aluminous cement (see column 7, lines 1-4).

Aluminous cement has fire retarding properties. Therefore, it would have been obvious to one of ordinary skill in the art to use aluminous cement in the von Bonin ('061) reference in order to have improved fire resistant properties.

Neither von Bonin reference discloses the type of plasticizer used. Waller discloses plasticizers that comprise carboxylic ethers (see abstract). The use of a carboxylic acid ether in a plasticizer increases fire resistance properties. Therefore, it would have been obvious to one of ordinary skill in the art to have a carboxylic ether plasticizer in order to enhance the fire retarding properties of the matrix material.

The European reference discloses the process of mixing several materials together and casting and drying to form a fire retardant product (see page 2, lines 50-58, page 3, lines 2-22 and page 4, lines 36-38). The amount plasticizer is not disclosed in the reference. However, this is an optimizable feature. Discovery of optimum values of a result effective variable involves only routine skill in the art *in re Boesch*, 617, F.2d 272, 205 (CCPA 1980). The amount of plasticizer affects fire retarding properties. Therefore, it would have been obvious to one of ordinary skill in the art to have the plasticizer in the amount of 3-5% in order to have enhanced fire retarding properties for the matrix material.

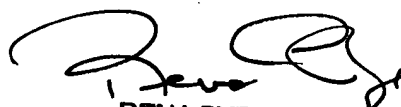
### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

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Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena L Dye, can be reached at (571) 272-3186. The fax phone number for the Group is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RENA DYE  
SUPERVISORY PATENT EXAMINER  
AU 1774